

SURVEILLANCE

S. 743                      Referred to Judiciary Committee  
[Nelson, Kennedy]

This bill would amend the Omnibus Crime Control and Safe Streets Act to accomplish the following changes in the law:

(1) Repeals 18 U.S.C. 2511(3) thereby withdrawing whatever congressional recognition that section gave the foreign intelligence surveillance powers of the President.

(2) Prohibits intercepting the communications of an American citizen or alien admitted for permanent residence until a prior judicial warrant is obtained issued on probable cause that a specific crime, e.g., espionage, has been or is about to be committed.

(3) Prohibits intercepting the communication of foreign power or its agent until a prior judicial warrant is obtained by establishing probable cause (a) that such interception is necessary to protect the national defense [note narrower standard than national security]; (b) that the interception will be consistent with the international obligations of the United States; and (c) that the target is a foreign power or foreign agent. (A foreign agent is defined as any person, not an American citizen or alien lawfully admitted for permanent residence, whose activities are intended to serve the interests of a foreign power and to undermine the national defense. Each application for such an interception would be made to the D.C. Federal District Court on personal and written authorization of the President and would provide detailed information on the target, the purposes and justification of the interception.) Upon court approval, only the FBI would be authorized to intercept the communication.

(4) Requires that every American citizen targetted be informed of the specifics of the surveillance within a month of the last authorized interception. (This disclosure could be postponed if the Government satisfies the court that the target is engaged in a continuing criminal enterprise or that disclosure could endanger national security interests.) A foreign power or its agent need not be informed of interceptions.

(5) Requires the Attorney General to report to the Congress, at least quarterly, the details of each interception undertaken on national security grounds, to be filed with the Senate Foreign Relations and Judiciary Committees and the House Foreign Affairs and Judiciary Committees.